

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

HERBERT B. KINCEN,

Defendants.

4:18CR3075

ORDER

Defendant's change of plea hearing was scheduled to be held on January 18, 2019 (Filing No. 63); February 12, 2019 (Filing No. 66); and then April 2, 2019 at 11:00 a.m. (Filing No. 75). At 9:40 a.m. on April 2, 2019, Defendant's counsel filed a motion to continue the change of plea hearing. By then, the defendant had already been transported to the Lincoln federal building for the hearing—the Marshal's only transport for that day. Prior to or during transport from the Saline County holding facility, the defendant himself advised the Marshal that the transport was a mistake; that his plea hearing had been continued.

Defense counsel's motion to continue the plea hearing stated counsel was in trial in a state case and could not attend the hearing as scheduled on April 2, 2019. But the state trial was continued on April 1, 2019—a full day before defense counsel filed his motion to continue. Defense counsel was in the U.S. Attorney's Office during the morning of April 2, 2019, but he did not contact the undersigned magistrate judge to alert her that a motion to continue was filed, that a continuance was needed, or to confirm that a continuance would be granted.

The court did not grant the motion to continue the change of plea hearing. The hearing began as scheduled on April 2, 2019, but defense counsel did not appear. The court had no option other than to continue the plea hearing and re-schedule it a fourth time. The hearing is currently set for April 18, 2019 at 4:00 p.m. Defense counsel now states that he is not available at that time and date, and he requests that it be re-scheduled.

Under the circumstances presented, and after advising the presiding judge, Senior District Judge Richard G. Kopf, of the foregoing scheduling issues,

IT IS ORDERED:

- 1) Defendant's change of plea hearing will be held before Judge Kopf. Any re-scheduling must be directed to his chambers for his prior approval.
- 2) The clerk shall send a copy of this order to Judge Kopf's chambers.

Dated this 9th day of April, 2019.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge